

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11.01.2016

CORAM:

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.498 of 2008

Girija

..Appellant/Plaintiff

-Vs-

1. Tamil Nadu Electricity Board
by its Superintending Engineer,
Periyar Electricity Distribution Circle,
Erode.

2. Accounts Officer,
Tamil Nadu Electricity Board,
Erode.

3. Rajeswari ..Respondents/Defendants

SECOND APPEAL filed under Section 100 of Code of Civil Procedure against the decree and judgment of the learned Principal District Judge, Erode in A.S.No.120 of 1998 dated 17.12.1998 preferred against the judgment and decree of the learned District Munsif, Perundurai in O.S.No.433 of 1996 dated 25.06.1998.

For Appellant : Mr.N.Manokaran

For Respondents : No Appearance

J U D G M E N T
सत्यमेव जयते

The plaintiff in O.S.No.433 of 1996 on the file of the learned District Munsif-cum-Judicial Magistrate, Perundurai is the appellant herein. The respondents are the defendants in the suit. The said suit was filed for declaration that the plaintiff is the legally wedded wife of Mr.Govindarajulu and she is entitled for receiving the death benefits arising out of the death of Govindarajulu and also for injunction to restrain the defendants 1 and 2 from paying the same to the 3rd defendant. By decree and judgment dated 25.06.1998, the trial court dismissed the suit. As against the same, the appellant filed an appeal in A.S.No.120 of 1998 on the file of the learned District Judge, Erode. The lower appellate court by decree and judgment dated 17.12.1998 dismissed the appeal thereby confirming the decree

and judgment of the trial court. Challenging the same, the appellant is before this Court with this Second Appeal.

2. When the Second Appeal came up for admission on 25.04.2008, this Court ordered notice to the respondents regarding admission. Though notice sent through court has been served on the respondents 1 and 2 and the private notice ordered has also been served on the 3rd respondent, they have not made appearance before this Court.

3. Today, the Second Appeal has come up before me for admission. I have heard the learned Counsel for the appellant and I have also perused the records carefully.

4. The case of the plaintiff in brief is as follows:

one Mr. Govindarajulu was an employee of the Tamil Nadu Electricity Board. The plaintiff claims to be his wife. The marriage between her and Govindarajan, according to her, was solemnized on 02.03.1977. Out of the said wedlock, two children have been born to them. The 3rd defendant is not the legally wedded wife of Govindarajulu. Govindarajulu died on 31.01.1996. On account of his demise, the respondents 1 and 2 are liable to pay the monetary benefits arising therefrom to the plaintiff. The 3rd respondent made an attempt to receive the same. The plaintiff also made a claim as according to her, she is the legally wedded wife of Govindarajulu and her children are the legal heirs who are entitled to receive the said benefits. Since an attempt was made to pay the said amount to the 3rd defendant and her children, the present suit came to be filed.

5. In the written statement, the 3rd defendant took a specific plea that there was no marriage at all between the plaintiff and Govindarajulu. According to her, Govindarajulu had earlier married one Meera Bai on 01.09.1963. Govindarajulu was a Hindu and Meera Bai was also a Hindu. But Meera Bai died subsequently. Thereafter, according to the 3rd defendant, Govindarajulu developed illegal intimacy with the plaintiff who was a destitute woman and thus, the plaintiff was only the kept concubine of Govindarajulu. It was also contended before the trial court by the 3rd defendant that the plaintiff is a Christian whereas Govindarajulu was a Hindu and since the so called marriage said to have been celebrated between the plaintiff and Govindarajulu is not valid in the eye of law, she is not the legally wedded wife of Govindarajan.

6. Based on the above pleadings, the trial court framed appropriate issues. On the side of the plaintiff, she was examined as P.W.1 and as many as 9 documents have been exhibited. On the side of the 3rd defendant, two witnesses were examined and as many as 7 documents have been marked. Having

considered all the above, the trial court dismissed the suit and the lower appellate court also confirmed the same by dismissing the appeal preferred by the appellant herein. That is how the appellant is before this Court with this Second Appeal.

7. In this Second Appeal, the learned Counsel for the appellant would submit that though it is true that a specific plea was taken in the written statement filed by the 3rd defendant that the plaintiff is a Christian, there is no proof for the same. He would further submit that assuming that the plaintiff is a Christian, the very fact that she had undergone a Hindu form of marriage with Govindaraju in a Hindu Temple at Palani in Tamil Nadu would go to show that there was an automatic conversion. The learned Counsel for the appellant would also submit that from the conduct of the parties, it can be presumed under Section 114 of the Indian Evidence Act that the plaintiff and Govindarulu were legally wedded husband and wife and the said presumption has not been rebutted by the 3rd defendant. Therefore, according to the learned Counsel for the appellant, the courts below ought to have decreed the suit.

8. I have heard the above submissions.

9. In this Second Appeal, I do not find any substantial question of law at all involved. There is also no perversity in the findings recorded by the courts below. The crux of the issue is as to whether there was any marriage between Govindarajulu and the plaintiff and whether the said marriage is valid or not. The plaintiff has let in evidence that there was marriage between her and Govindarajulu in a Hindu Temple in Palani. Assuming that there was such a marriage in a Hindu Temple at Palani, immediately the question arises is as to whether the said marriage is valid in the eye of law. In the written statement, the 3rd defendant has stated that the plaintiff is a Christian whereas Govindarajulu was a Hindu. To perform a valid marriage between a Hindu and a Christian, the provisions of the Special Marriage Act should have been followed. Here, in this case, it is not the case of the plaintiff at all that the plaintiff has stated that the marriage which was celebrated in the Hindu Temple was in a Hindu Form of Marriage. A Hindu form of marriage can constitute a valid marriage, provided, the bridegroom and the bride are Hindus. In the instant case, though the 3rd defendant has taken the specific plea that the plaintiff is a Christian, there is no denial of the same. Thus, a Christian claims to have undergone a Hindu Form of Marriage with a Hindu in a Hindu Temple.

10. In my considered opinion, the said marriage is not valid. Therefore, the plaintiff cannot be stated to be the legally wedded wife of the deceased Govindarajulu. At the same time, I do not want to express any opinion regarding the legal

status of the children born to the plaintiff and Govindarajulu, as the same is not an issue before me. Thus, I find that the courts below were right in holding that the plaintiff is not the legally wedded wife of Govindarajulu and thus, the courts below were right in declining to grant the relief as prayed for by the plaintiff. Thus, I do not find any merit at all in this Second Appeal.

11. In the result, the Second Appeal fails and the same is accordingly dismissed. The decree and judgment of the lower appellate court is hereby confirmed. No costs.

tsi

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

TO

1.The Principal District Judge, Erode.

2.The District Munsif-cum-Judicial Magistrate, Perundurai.

3.The Section Officer, V.R.Section, High Court, Madras-104.

+ 1 CC TO Mr.N.Manokaran, ADVOCATE SR 2097

KR/26/2/16

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